

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

AARON SIEGEL; JASON COOK;
JOSEPH DELUCA; NICOLE
CUOZZO; TIMOTHY VARGA;
CHRISTOPHER STAMOS; KIM
HENRY; and ASSOCIATION OF
NEW JERSEY RIFLE & PISTOL
CLUBS, INC.,

Plaintiffs,

v.

MATTHEW PLATKIN, in his
official capacity as
Attorney General of New
Jersey; PATRICK J. CALLAHAN,
in his official capacity as
Superintendent of the New
Jersey Division of State
Police,

Defendants.

CIVIL ACTION NUMBER:

22-cv-7463-KMW-AMD

MOTION HEARING FOR A
TEMPORARY RESTRAINING
ORDER AND CONSOLIDATION

Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101
January 12, 2023
Commencing at 1:36 p.m.

B E F O R E:

THE HONORABLE KAREN M. WILLIAMS,
UNITED STATES DISTRICT JUDGE

Sharon Ricci, Official Court Reporter
sharon.ricci.usdcnj@gmail.com
267-249-8780

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A P P E A R A N C E S:

HARTMAN & WINNICKI, P.C.
BY: DANIEL L. SCHMUTTER, ESQUIRE
74 Passaic Street
Ridgewood, New Jersey 07450
For the Plaintiffs

OFFICE OF THE NEW JERSEY ATTORNEY GENERAL
BY: ANGELA CAI, ESQUIRE
JEREMY FEIGENBAUM, ESQUIRE
JEAN REILLY, ESQUIRE
25 Market Street
Trenton, New Jersey 08625
For the Defendants

1 (PROCEEDINGS held in open court before The Honorable
2 Karen M. Williams, United States District Judge, at 1:36 p.m.)

3 THE COURTROOM DEPUTY: All rise.

4 THE COURT: Good afternoon. Everyone please be
5 seated.

6 So the Court has the masking policy in place for all
7 public spaces, which includes the courtroom. I will dispense
8 with that requirement only while speaking and provided you keep
9 safe distance and whoever you're closest to doesn't object.
10 The reason for that is so that the court reporter can capture
11 everyone's words clearly.

12 We're here this afternoon in the matter of Siegel vs.
13 Platkin, Case No. 22-7463. We're here this afternoon for an
14 emergency motion to consolidate, a motion for temporary
15 restraining order and preliminary injunction.

16 Let me hear from the parties first on the motion to
17 consolidate.

18 MS. CAI: Would you like to hear from the State first?

19 THE COURT: Yeah. And we can -- I can short circuit
20 some of this because there's no disagreement that the case, in
21 fact, should be consolidated; there seems to be a lack of
22 agreement on which judge the case should go to.

23 And so I will hear from the parties on that because it
24 is the first motion.

25 MS. CAI: Your Honor, do you prefer that I speak from

1 the podium or --

2 THE COURT: Wherever you're comfortable.

3 MS. CAI: I just wasn't expecting the microphone to be
4 on the podium itself.

5 THE COURT: Oh, wait, did we enter appearances?

6 MR. SCHMUTTER: No.

7 THE COURT: Enter your appearances first, please.

8 MS. CAI: Yes, Your Honor. Angela Cai, Deputy
9 Solicitor General for the State.

10 MR. SCHMUTTER: Good afternoon, Your Honor. Daniel
11 Schmutter from the firm of Hartman & Winnicki for plaintiffs.

12 THE COURT: Okay.

13 MS. CAI: Your Honor, on the motion to consolidate, I
14 do think that both the rules and the State's position are very
15 clear, and I don't think that anything in Mr. Schmutter's
16 letter from yesterday changes any of that. I will just
17 emphasize a couple of things.

18 First, is that nothing about our motion or the
19 arguments we're making turns on how this Court will rule on the
20 merits or any of the issues or how any other Court rules. We
21 filed this motion on December 23rd, as soon as we were informed
22 that there were two cases pending on overlapping challenges.
23 And it's consistent with our practice in other cases like these
24 where people are challenging state policies, such as the Ocean
25 County case we cited.

1 We filed for consolidation because all of the factors
2 in FRCP 42 are met. At the time we moved, we did not know
3 which TRO was going to be heard first, which judge was going to
4 decide first, and of course, what the ruling would be. And
5 that's the way it should be.

6 These natural rules of assignments such as those in
7 Local Civil Rule 40.1 exist for a really important reason, and
8 we see no reason to depart from those rules and, of course,
9 also the longstanding practices of this Court.

10 And I would say that if there is no neutral or
11 consistent rule like the one we already have, which is that
12 consolidated cases and related cases go with the earlier docket
13 number, I think the Court will see more frequently the type of
14 approach that plaintiffs are taking here, which is, waiting to
15 see how one Court rules, then saying we do want consolidation,
16 manufacturing arguments for why one court versus the other
17 should get consolidated cases. I think we should try to avoid
18 all of that in how we deal with case assignments in general.

19 The second point is a very general one, which is that,
20 you know, plaintiffs seem to focus on the TRO period, but we've
21 always been looking at the full length of the case for
22 consolidation. It would be consolidated for the entirety of
23 the case. So every motion from discovery motions to motions
24 for extensions to summary judgment, all of that would risk
25 problems of duplication and inconsistent judgements if the

1 cases were to run separately.

2 I think Your Honor is quite familiar with the issues
3 in this case, especially after the four extra briefs filed this
4 week, and especially with the ones that are unique to this
5 case, which outnumber the five claims in *Koons*, but also rests
6 on, you know, overlapping issues of law.

7 And so, you know, there's a reason why the local rules
8 don't say cases get assigned to the judge who ruled first or
9 had the case for longer. It's to preserve the neutral,
10 consistent playbook for judge assignments.

11 Your Honor, I don't know if you received a letter that
12 came in at noon from the *Koons* plaintiffs.

13 THE COURT: I did.

14 MS. CAI: I'm happy to address that if you'd like. I
15 know it wasn't part of our schedule.

16 THE COURT: I did review it, meaning I read it,
17 understood the positions set forth therein.

18 MS. CAI: I don't know if Mr. Jensen is here today. I
19 know he was here on Monday.

20 THE COURT: I don't -- based on what I've learned so
21 far and having read the letter, I don't see a need for that
22 letter itself to be addressed.

23 MS. CAI: Okay. If Your Honor has any questions, we
24 would be happy to answer, or we can submit a letter in response
25 as well. Or if Mr. Schmutter wants to talk about it, I'm

1 happy to come back up.

2 THE COURT: Okay. Thank you.

3 MR. SCHMUTTER: Judge, just for the record, I haven't
4 seen the letter so...

5 MS. CAI: Great.

6 THE COURT: So you can't comment on that, is that
7 the --

8 MR. SCHMUTTER: I can't comment. I haven't seen it.
9 If somebody could tell me what it says, I'd be happy to comment
10 on it, but I literally was driving so...

11 THE COURT: The gist of it is *Koons* should not be
12 consolidated into this case.

13 MR. SCHMUTTER: So is it anything different than their
14 original position?

15 THE COURT: I think originally they were saying --
16 they were opposing consolidation. So just a -- I'm going to --
17 I will characterize it as putting a finer -- I'll characterize
18 it as putting a finer point on their position.

19 MR. SCHMUTTER: Did they comment on consolidating
20 Siegel into *Koons*?

21 THE COURT: No.

22 MR. SCHMUTTER: They didn't. Okay. Thank you, Judge.
23 I apologize for not being familiar with that letter.

24 So unfortunately, the State has stepped into quick
25 sand here, because if they were truly just interested in the

1 Rule 42 considerations of judicial economy, duplication of
2 effort, preserving resources, fairness to the litigants, they
3 should be indifferent between which consolidation takes place,
4 whether *Koons* is consolidated into this case or this case is
5 consolidated into the *Koons*. They should be neutral on that,
6 but they're not.

7 They opposed consolidation into *Koons*. And what that
8 reveals is that they are, in fact, judge shopping. In the
9 state of New Jersey, no litigant gets to make that decision.

10 Now, the Court is aware that we were originally
11 opposing all consolidation, and then after Judge Bumb's
12 decision, our brief on Tuesday took the position that
13 consolidation should take place from Siegel into *Koons*, and
14 it's set forth fully in our papers.

15 The problem that the State has on the consolidation
16 motion is that all of the Rule 42 factors, all of the Rule 42
17 concerns favor consolidation into *Koons*, none of them favor
18 bringing *Koons* into here. Your Honor will recall our argument
19 that in addition to the very substantial resources that were
20 devoted to the 60-page ruling in *Koons*, we also argued -- and
21 this was not responded to -- that it's unlikely that that's
22 going to change between the TRO in *Koons* and the preliminary
23 injunction in *Koons* for all the reasons we laid out because
24 they're primarily issues of law, because there is unlikely to
25 be any factual development between the TRO and the PI, that

1 should matter, for the outcome of that injunctive relief.

2 And so the problem that the State has is that
3 consolidation from *Koons* into this case works against the
4 Rule 42 factors. It creates more work, less judicial economy,
5 more inconsistency with the efficiency that Rule 42 stands for,
6 whereas consolidation into *Koons* from here favors all of those
7 factors. So the only reason that the State could possibly
8 prefer consolidation into this case and oppose consolidation
9 into *Koons* is because the State of New Jersey wants to pick its
10 judge.

11 That's the only factor that would matter to the
12 application they're making. And of course, as the Court knows,
13 that's not a legitimate factor. And so if the Court orders
14 *Koons* is consolidated into this case, the only reason could be
15 that the Court is giving the State of New Jersey its choice of
16 judges, and that would be an error of law that would be clearly
17 reversible, it would be improper.

18 Now, the --

19 THE COURT: I want to just mention briefly the
20 judge-shopping issue. I've never ruled on any of this anyway.
21 Nobody could really be choosing me because they think I'm
22 favorable because no one knows exactly how -- I haven't issued
23 any other prior gun control, I've never spoken on the issue.
24 And so just to be clear, that is a weaker argument that they
25 actually wanted to be with me, because they have no idea what

1 I'm going to do.

2 MR. SCHMUTTER: Understood, Judge. And we agree with
3 that. Although what they do know is that Judge Bumb has
4 already ruled against them on the TRO, right?

5 So they have some information about Judge Bumb and no
6 information about Your Honor. And so if you're balancing the
7 information they do have with the information they don't have,
8 they clearly would rather be in front of a judge that has not
9 already ruled against them. And so Your Honor's correct,
10 though.

11 So the problem is that they did the same research we
12 did. We researched whether there's any law, case, rule,
13 statute that actually requires consolidation in one direction
14 or the other, and there isn't. They cited all the same cases.
15 They read the same cases we did. There are no cases that say
16 you have to do it one way or the other.

17 The only rule, it simply says the motion goes to the
18 judge in the first filed docket, and that judge makes the
19 decision. There's nothing that says how the decision should go
20 and in which direction consolidation should take place.

21 Now, interestingly, they try to cite Local
22 Rule 40.1(c), the Related Case Rule, but the Related Case Rule
23 doesn't tell -- doesn't govern Rule 42. The Related Case Rule
24 simply says that if you have an earlier case and then a new
25 case is filed, as a matter of allocation, it gets allocated to

1 the related case. That really doesn't have anything to do with
2 the issues under Rule 42 of efficiency.

3 As the Court saw in the EEOC case that we cited from
4 the Third Circuit, the Third Circuit is clear that courts are
5 not to apply -- first-filed concepts -- it has to be flexible,
6 it has to serve the interests of justice, it has to serve the
7 equity of the situation. And so the fact that in other
8 consolidation motions it is the general practice to do it the
9 way the State is asking for it, there's nothing compulsory
10 about that.

11 And importantly, if we think about what first-filed
12 rules -- or first-filed presumptions are about, they're
13 generally about the fact that you typically have a case that's
14 been going for a while, then you have another case, and the
15 question is, should the newer case be deferred to the earlier
16 case?

17 And we see first-filed rules or practices in a lot of
18 context, comity, transfer under 1404, 1406, the issue in *EEOC*
19 *vs. University of Pennsylvania* where it was an issue of
20 enjoining a subsequent case, and we see it in the procedural
21 approach to Rule 42 and local Rule 42.1.

22 But none of the first-filed values, purposes are
23 present here and here's why: These cases are -- for the
24 purposes of Rule 42, these are simultaneous cases. These cases
25 have consecutive docket numbers, they were filed within

1 minutes, maybe even seconds of each other. The way this went
2 down -- I can't speak for Mr. Jensen, but I know what I did.
3 And I was watching the press conference, and the moment the
4 Governor put pen to paper, I pressed the "file." I'm sure he
5 did the exact same thing, and so we have consecutive docket
6 numbers. Their case was filed within minutes of ours.

7 So they really are -- from a Rule 42 perspective,
8 they're simultaneous cases. Neither case, when they were
9 filed, had a first-filed advantage. None of the first-filed
10 stuff was present that we normally see in cases like comity
11 cases, again, transfer case, enjoining injunction cases where
12 cases are -- none of that is present here.

13 The only factors that are present here are Judge
14 Bumb's 60-page Opinion. That's what drives this bus. That is
15 the overwhelming factor here. Everything else is equal. The
16 fact that we happen to have a docket number one lower -- I
17 mean, we're 7463, they're 7464. Literally -- and again, I'm
18 not -- I don't have access to the software, but I'm sure if you
19 saw the filing, if you looked at the ECF notices, they must
20 have been filed within minutes or seconds.

21 THE COURT: Well, interesting that you raised that.
22 The complaint in *Koons* was actually filed first.

23 MR. SCHMUTTER: Okay.

24 THE COURT: In ECF, you open and get your assigned
25 number when you open the shell --

1 MR. SCHMUTTER: That's right. You know, you're right.

2 THE COURT: -- and the complaint in *Koons* was actually
3 filed first.

4 MR. SCHMUTTER: So that's interesting. So all I did
5 was is got my -- I opened my case first. They filed -- Your
6 Honor's right. I actually didn't think about that. I had the
7 first opened case; I don't have the first-filed case. Theirs
8 is the first-filed case actually.

9 So if we're going -- now, if you look at the words of
10 Local Rule 42.1, the procedure is it goes to the judge with the
11 earlier docket number. But if we're talking about first filed,
12 *Koons* is first. So Your Honor's right. I actually hadn't
13 thought about that.

14 So none of the technicalities that the State is
15 relying on matters here. The equities of the motion
16 overwhelmingly cry out for consolidation into *Koons*. There are
17 no equities that drive it in this direction. And so that's the
18 problem that they're facing. They're asking the Court to do
19 something that's actually contrary to Rule 42.

20 If they really were about Rule 42, if it was merely
21 about judicial efficiency, fairness to the parties, resources,
22 they should be perfectly fine with consolidating into *Koons*.
23 In fact, they should prefer it because it actually saves the
24 court resources. They're asking for redundancy, they're asking
25 for this Court to decide freshly the issues in our motion when

1 most of our TRO application would already be disposed of under
2 Judge Bumb's ruling. So they're asking this Court -- and not
3 that this Court can't do work, but the concepts under Rule 42
4 cry out against that.

5 And the other thing they're asking for, this is the
6 same basic problem. They're asking the *Koons* plaintiffs now to
7 come over here to have this Court do an entire fresh analysis
8 on the PI when -- and they didn't oppose this -- as we argued
9 in our brief on Tuesday, probably -- again, there's no way to
10 predict what's going to happen for sure, but based on the law
11 and the record, probably the PI will come out the same way.

12 So they're asking for redundancy in two different
13 ways. It plainly should go the other way around. And that's
14 the problem that the State of New Jersey faces right now.
15 They're in a situation that they can't really get out of. And
16 none of the equities, none of the standards support their
17 application.

18 THE COURT: Okay. Thank you.

19 Ms. Cai, did you want a brief response?

20 MS. CAI: I did, Your Honor. Thank you.

21 Your Honor, I think what's indisputable is what's
22 driving the plaintiffs' bus is that they saw a favorable
23 opinion from Judge Bumb and that led them to completely change
24 their tune. They unequivocally opposed consolidation until
25 that very moment.

1 I want to address a couple little things and then I
2 want to get to the big heart of the issue. The little things.
3 So the neutral rule is the lower docket number controls. So it
4 doesn't matter whose complaint got in the door first, who
5 technically amended their complaint second, any of these other
6 issues. I mean, the reason we have a technical rule -- it is a
7 technical rule, but a consistent rule -- is so that all parties
8 play by the same rules.

9 THE COURT: So here's my question about this, because
10 obviously I looked into -- I looked into this when the motion
11 was filed about first-file, when the complaint came in,
12 whatever. More importantly, I looked at both dockets.

13 This docket proceeded differently than *Koons* because
14 in this case the first thing filed was a briefing schedule for
15 approval after the case was opened. In *Koons*, the first thing
16 was an order to show cause. And so it kind of tees up why --
17 even though I have the first-filed docket number, this case is
18 a little bit behind, right? It's how the parties -- the
19 actions taken after the complaints were filed that literally
20 teed this up so that I would get to this -- or I was able to
21 get to this after Judge Bumb. Right?

22 We're all looking to do the same things, right, get to
23 the right answer, do the best that we can, move the case
24 forward, follow it. Judge Bumb's oral argument -- and, you
25 know, I'm transparent in terms of how I think and how I get to

1 certain places.

2 When I saw that Judge Bumb ordered oral argument for
3 January 5th, I went back, I said, oh, my God, am I late? Did I
4 wait too long? And then that is what compelled me to look at
5 the two dockets. How does this happen? I have the older case.
6 To be clear, the earlier docket number.

7 So I think all of this just underscores that these
8 cases are filed at the same time and the reason, right, that
9 Judge Bumb was able to hear the parties and issue an Opinion
10 and Order ahead of me is because the way the cases were
11 presented for decision by the Judge differently. It really is.

12 And so I say this because I don't want either of you
13 to spend another second on judge shopping. We don't suborn
14 that kind of behavior. There's nothing that this Court will
15 ever do that will permit judge shopping. And as I've alluded
16 to a little bit before, I'm the newbie in this role. So to
17 suggest that anyone was shopping for me is a little
18 disingenuous.

19 MS. CAI: Yes, Your Honor. And I'll just point out,
20 we filed our motion to consolidate before anything had been
21 heard from Judge Bumb. I don't even -- it's -- I believe that
22 we got notice of the *Koons*' complaint at like 5:00 p.m. on
23 that -- we knew the case existed, but we didn't know that we
24 were going to get it, and the same night we filed the motion
25 because we knew we wanted everything to proceed together

1 because it's efficient and we didn't want the case to proceed
2 on two different tracks and to have all kinds of, you know,
3 potential issues there.

4 I will note just generally, you know, plaintiffs say
5 we're looking at the same cases. I didn't hear him talk about
6 the cases that we cited. Importantly, you know, I think the --
7 if you look at the cases we cited, there's more. I didn't want
8 to put everything in the brief. Every case in which there's a
9 motion to consolidate and there's two different judges, no
10 matter what had happened in the docket of the second one, if
11 there was more activity, more decisions, more TROs being issued
12 in the second, the higher numbered docket, no matter what
13 happens, after it gets consolidated it always go to the first
14 docket number.

15 So we gave you two examples, the *Younes, Sodhi* case,
16 which actually Judge Bumb herself decided. A lot happened in
17 the later docket number, *Sodhi* case. There was a TRO granted,
18 there was a PI motion that then had been scheduled for a
19 hearing and then was withdrawn, there were other motions. All
20 that had happened, there's almost no activity in the *Younes*
21 case other than complaint was filed, there was an answer,
22 motion to consolidate. And yet after consolidation, everything
23 went to the first docket number.

24 That's the rule and that's the way it's always been
25 followed, that's all we're asking here. And we make that

1 request before knowing anything about the order of things,
2 about how either judge would rule, and that's just always been
3 the consistent position we've had.

4 As for right now, there is very much a reason to
5 consolidate because the case is going to go on, both cases are
6 going to go on, there are a lot of issues in this case that are
7 not in *Koons*. Your Honor seen --

8 THE COURT: Let's not talk about those now because
9 that's the next argument.

10 MS. CAI: Sure. I'm just observing, Your Honor, that
11 -- Your Honor has looked at this case, including additional
12 issues as well, Judge Bumb obviously has looked at the issues
13 in *Koons*, and some of them do overlap, but there is obvious
14 efficiency to be gained by combining these cases. And so we
15 just ask that it be combined and go to the same rules of
16 decision that has always existed, and there's no inconsistency
17 in that.

18 Finally, I will note, just because I don't know if
19 I'll have a chance to address these issues again and just in
20 case, you know, additional letters or whatever come up on the
21 *Koons* plaintiffs' letter -- Mr. Schmutter, he's free to talk
22 about this later on if he wants to.

23 I just want to correct a couple things because I think
24 it's -- just for the record and we're making a record here. So
25 the first thing is that we haven't appealed the *Koons* decision.

1 It's now Thursday. It's black letter law that generally TROs
2 are not appealable. There are circumstances that could happen
3 later. We haven't gotten there yet. And it depends on the
4 kinds of claims. And they were bringing, you know, specific
5 kinds of claims that make that -- there's no mandatory
6 requirement that if a case gets consolidated after a TRO has
7 been issued, that we would somehow need to seek reconsideration
8 of the TRO before appealing. I mean, we're not appealing right
9 now and that's not really an issue, but that premise is really
10 mistaken.

11 And then finally, the PI schedule in *Koons*, that's not
12 set. And I was a little surprised to see Mr. Jensen -- I hate
13 to say this while he's not here, but he omits the fact that the
14 agreement that we had tentatively was in case there is no
15 consolidation. And he's the one who actually asked me not to
16 put -- he said, is it okay if we wait to file this with Judge
17 Bumb until after the hearing today. And so it does surprise me
18 that he said that that was a firm agreement when it very much
19 was not.

20 But all of that is to say it doesn't matter because
21 the reasons that we've given this Court are just the reasons
22 that have always been followed and the way it should be
23 consolidated -- I think no one disagrees there should be
24 consolidation and we're just suggesting that the way that it
25 has always gone is the way that this case should go, it should

1 not be the first case that we would be aware of to be
2 consolidated the opposite away.

3 Thank you, Your Honor.

4 THE COURT: You're welcome.

5 All right. Mr. Schmutter, are you ready to address
6 the TRO and preliminary injunction?

7 MR. SCHMUTTER: Yes, Judge.

8 THE COURT: And I'm also going to streamline the
9 arguments in this. According to your papers, Judge Bumb
10 resolved a hundred percent of the TRO. To be fair, nearly, I
11 think, were your words. Right?

12 Explain that to me. Because you know your adversaries
13 disagree with that wholeheartedly.

14 MR. SCHMUTTER: Absolutely, Judge.

15 So Your Honor saw our chart, Exhibit B to my
16 declaration -- and just to clarify, we're not asking for the
17 preliminary injunctive relief today, just the TRO. And so we
18 intentionally on Exhibit B broke it up into pieces. We wanted
19 it to be absolutely clear, what are we seeking on the TRO, what
20 are we seeking on the PI later.

21 And when you compare Exhibit B, the two, the pieces of
22 Exhibit B, it's clear that on the TRO we're only seeking relief
23 on sensitive-place issues. Now, we are asserting multiple
24 theories on those issues, not just the Second Amendment, but as
25 we said, our TRO application could be fully disposed of just on

1 the Second Amendment issues. And so whichever Court hears our
2 TRO and decides our TRO, the judge need not reach the First
3 Amendment issues, the equal protection issues, and the due
4 process issues if the Court grants all our relief on Second
5 Amendment grounds.

6 And so -- now, so that's concept number one in answer
7 to Your Honor's question.

8 Concept number two is that the State's opposition is
9 exactly the same, for the most part. Not a hundred percent,
10 but mostly the same. Mostly the same arguments on standing
11 with a couple of exceptions; exactly the same arguments on
12 historical tradition; exactly the same arguments on irreparable
13 harm. And so these things have been resolved already.

14 And so it's all the same citations to the old
15 statutes. Judge Bumb dealt with all of that stuff. We make
16 essentially the same arguments, mostly the same arguments that
17 the plaintiffs did in *Koons* on the historical tradition; the
18 issues of standing are the same.

19 And, in fact, as Your Honor's aware, Judge Bumb found
20 in favor of the *Koons* plaintiffs on standing. We think our
21 standing facts are even stronger with respect to the
22 allegations made by the plaintiffs. You know, I regularly go
23 here, I do this three times a year, I frequently do that, from
24 time to time I do this. We covered the bases in great detail,
25 more than we really needed to.

1 And so on standing issues -- again, standing,
2 irreparable harm, likelihood of success on the merits dealing
3 with historical tradition, most of that work has already been
4 done. The only difference is -- oh, and I guess this is one of
5 the things maybe Your Honor was asking about, the analysis on
6 historical tradition applies equal to all the other sensitive
7 places we brought into play. So their historical references
8 don't do any better on all of the other sensitive places than
9 on the first five.

10 Your Honor will recall that the *Koons* plaintiffs
11 sought relief as to libraries and museums, Section 12;
12 restaurants, Section 15 -- or that serve alcohol; Section 17,
13 which I believe, if I recall correctly, is entertainment
14 facilities; 24, which is private property; and 7(b), which is
15 the vehicle restriction. All the same argument, all the same
16 findings, all of the same deficiencies in the State's proffer
17 of historical references and historical citations all apply to
18 the rest of the sensitive places that we are challenging as
19 well in our TRO.

20 So as a matter of the record, it's almost completely
21 there. There's very little -- all the heavy lifting really has
22 been done. There's very little else that has to be done to
23 resolve the TRO under Judge Bumb's analysis and Judge Bumb's
24 ruling.

25 Does that answer Your Honor's question? I hope I went

1 to where Your Honor was asking.

2 THE COURT: Yes, you did.

3 MR. SCHMUTTER: Okay. Thank you, Judge.

4 Does Your Honor have any other particular way you want
5 us to do this? There's a lot of stuff.

6 THE COURT: So, yeah. If Judge Bumb has rendered your
7 application resolved -- I'll use your words, "resolved" --
8 what's before me? What's related? What do you need a decision
9 from me on?

10 MR. SCHMUTTER: Well, so -- you mean if you keep the
11 case, if Your Honor keeps the case?

12 THE COURT: Yes.

13 MR. SCHMUTTER: Okay.

14 THE COURT: If I were to decide what is before me
15 still right now, the TRO for plaintiffs. Because even though I
16 understand and fully read your submissions, the fact that you
17 indicate that Judge Bumb's Opinion nearly resolves all of your
18 TRO requests is intriguing to me because these plaintiffs are
19 very different.

20 But if that is your supposition and position, then
21 what am I deciding? What am I enjoining? What are you seeking
22 a TRO on? I'm trying to say this as plainly as I can.

23 MR. SCHMUTTER: Understood, Your Honor.

24 So let me clarify something from our perspective, and
25 I want to make sure we're all on the same page on this. We

1 think consolidation should be decided before the TRO. So we
2 think that if the Court is going to send --

3 THE COURT: Wait.

4 Do you agree with that, Ms. Cai, that consolidation
5 should be decided before the TRO?

6 MS. CAI: I don't have a view on how -- the Court has
7 discretion to decide whichever motion to decide first.

8 THE COURT: So let's go through the reasons why you
9 say that.

10 MR. SCHMUTTER: For exactly the question Your Honor
11 raised. If -- because if -- the savings -- the Rule 42 values,
12 savings of judicial resources, is maximized by Judge Bumb
13 deciding our TRO application. That's where half of the value
14 of consolidation comes.

15 The other half is preventing this Court to have to
16 repeat for the *Koons* plaintiffs what Judge Bumb already did.
17 So there are two pieces to it. There's judicial economy as to
18 our application and judicial economy as to the *Koons'*
19 application for preliminary injunction. So if the
20 consolidation takes place immediately, then Judge Bumb decides
21 the TRO, 98 percent of the work is done. That's what we meant
22 by that.

23 Now, there is the other aspect of it, which is, number
24 one, collateral estoppel. The Court saw our collateral
25 estoppel argument. But even if the Court doesn't think that

1 the defendants are collaterally estopped, we think the Court
2 should adopt Judge Bumb's reasoning and, therefore, in that
3 sense, all of that work is already done. All right. If this
4 Court determines -- if this Court's going to hear the TRO and
5 decide the TRO, regardless of if consolidation happens or when,
6 if this Court is the one who decides the TRO, this Court can
7 and should adopt Judge Bumb's 60-page reasoning. Those
8 principles, again, get this Court almost to the finish line.

9 The only other things this Court would have to decide
10 are the -- there's some additional standing arguments relating
11 to, for example, Bayonne and Union County and the Parks
12 Commissioner and the Fish and Game. So those are some unique
13 arguments, which we don't believe are meritorious, but those
14 aren't present in *Koons*. So whoever decides the TRO would have
15 to reach that. That's not addressed in *Koons*. Okay.

16 And then the additional elements that we're
17 challenging. So we're challenging parks, beaches, recreation
18 facilities; we're challenging medical and treatment facilities;
19 we're challenging casinos; we're challenging racetracks. So
20 what the Court should do, whether it's Your Honor or Judge
21 Bumb, what the Court should do is take the analysis and
22 principles already established by Judge Bumb, because it's very
23 sound, and simply apply them to the other provisions so they
24 apply equally to all the other provisions, because under the
25 Second Amendment *Bruen* analysis, the State's historical

1 references do no better on racetracks, medical, casinos, all
2 the other ones, airports, transportation hubs, than it did for
3 the five that the *Koons* plaintiffs raised.

4 It's the same analysis. You just map it onto these
5 other challenges and it works equally well, and the State's
6 position is equally deficient as to all of those.

7 That's -- and if the Court wants to -- we don't think
8 it needs to, assuming the Court -- again, either this Court or
9 Judge Bumb, determines -- if the Court determines that we are
10 entitled to complete relief, the Court need not reach the First
11 Amendment due process and equal protection issues. But if the
12 Court is uncertain about that, then the Court -- again, this
13 Court or Judge Bumb should reach then the First Amendment
14 issues, the equal protection issues, and the due process
15 issues. So that's what we see in terms of how -- the way this
16 ought to go.

17 THE COURT: Understood.

18 MR. SCHMUTTER: Okay. Thank you, Judge.

19 I want to -- I'm not going to -- I'm going to try to
20 avoid repeating what's in our papers. This is a lot of papers.
21 Your Honor read them, of course, so I'm not going to waste the
22 Court's time.

23 I want to do just a couple of things beyond what we've
24 already said. I want to emphasize and sort of give a big
25 picture of the *Bruen* framework because it's really critical --

1 resolving any of these motions and all of these issues requires
2 putting *Bruen* in the right context, and that's critically
3 important.

4 So when one reads *Bruen* from cover to cover -- and
5 that's really the way it has to be -- the defendants have
6 cherry-picked pieces of the case and drawn the wrong
7 conclusions about what *Bruen* actually does. When you read
8 *Bruen* cover to cover, start to finish, it is really clear that
9 *Bruen* says there is a fundamental, broad right to carry a
10 handgun outside the home for self-defense.

11 And what that means is, that when a person walks out
12 their front door, they should be able to carry -- defend
13 themselves as much as when they're in their house, and should
14 do so other than under exceptional circumstances. And that
15 means there is a broad default rule of carry. People should be
16 able to carry handguns in most circumstances at most times in
17 most situations.

18 What this law does is the exact opposite of that. And
19 you don't have to have watched -- although it helps to have
20 watched the June 24 press conference, the day after *Bruen* was
21 decided. *Bruen* is decided June 23rd; June 24th, the Governor
22 and the defendants, Platkin and Callahan, had a press
23 conference in which they talked about how much they hate the
24 ruling and how they're going to do everything they can to
25 undermine it. They didn't say "undermine," but it was really

1 obvious from the subtext. The Governor signed an executive
2 order basically telling all of the departments to do everything
3 -- come up with every idea they could possibly come up with,
4 and he announced his wish list of sensitive-place restrictions,
5 which he got six months later.

6 (Court reporter interruption)

7 MR. SCHMUTTER: I'm sorry. I apologize.

8 And he announced his wish list of sensitive places,
9 which he got six months later.

10 Then you look at the debates in the committees, in the
11 Assembly and the Senate, and you see all these comments about
12 how much they hate people carrying guns, how people shouldn't
13 carry guns, how it's dangerous to carry guns. But *Bruen*
14 clearly says that is not a proper consideration; people have
15 that fundamental right to do that.

16 And that comes straight out of *Heller*, that you don't
17 get -- the State of New Jersey doesn't get to decide that
18 people shouldn't be carrying guns. It's a fundamental right.
19 That was decided when the Second Amendment was adopted, and yet
20 the politicians, including these defendants, keep talking about
21 how much they hate this.

22 And when you look at the -- when you look at the
23 YouTube video of the signing ceremony on December 22nd, it's
24 the same stuff, just more speakers. The Governor, the Attorney
25 General, Giffords -- you know, all the groups, the Senate

1 President, the Assembly, the Speaker, all talking about how
2 people shouldn't carry guns. But that's not constitutionally
3 permissible, and yet that's what they're doing.

4 And if there's any question about whether the purpose
5 of this law is to stop people from carrying guns, all you need
6 to know is that *Bruen* says that when you walk out your door,
7 you should be able to carry a handgun for self-defense; and the
8 very first thing every single person has to do is unload and
9 lock up their gun and put it in the trunk of their car. The
10 moment you walk out your door, you have to be disarmed.

11 So it's impossible to come away from this law and not
12 see what they're trying to do here. There's a fundamental
13 disregard for the *Bruen* case. And so it's very important to
14 look at it that way, because once you look at it that way, you
15 can see what they're doing.

16 Now, also in the context of the *Bruen* analysis, I want
17 to talk about analogies. The inner papers, the State talks a
18 lot about analogies, and what they try to -- and I understand
19 why they've tried to do this -- and we've talked about this in
20 our papers, I won't get too far into it, but --

21 THE COURT: Slow.

22 MR. SCHMUTTER: I am sorry, Judge. I have that
23 problem all the time. I've been doing this for 30 years, I
24 still have that problem. I apologize.

25 As the Court saw in our papers, they've attempted to

1 aggregate dissimilar concepts in order to boost the numerosity
2 of their examples because they recognize that *Bruen* was
3 absolutely clear, that a small number of examples doesn't
4 create a tradition. Remember, *Bruen* is about historical
5 tradition. And *Bruen* explains that tradition involves
6 widespread practices and long-lasting practices.

7 And so the Court is clear, one example, two examples,
8 three examples doesn't do it. And that was three examples out
9 of 13. Most, almost all of them, maybe one or two exceptions,
10 of the State's examples are from 1860's, 1870's, 1880's -- and
11 we've already briefed that issue, so I'm not going to belabor
12 it, but by that time, there's 30, 40 states.

13 So if they have one example or two examples, it's even
14 worse from a *Bruen* perspective to establish tradition. They
15 don't get to use these outliers. And that's what outliers are
16 in the context of *Bruen*, and that's what Judge Bumb meant when
17 the Judge mentions "outliers." Outliers has numerical
18 significance, not simply -- because something could be an
19 outlier for a variety of reasons, right? It could be an
20 outlier because of territory, it could be an outlier because it
21 lasted only for a year, like in Texas, for example. But most
22 important, outlier means there's only one or two or three, you
23 know. And the Court was absolutely clear about, there's no
24 question you can't do that. That's not a historical tradition.

25 But the attempt by the State to aggregate these

1 dissimilar things, what they're trying to do is they're trying
2 to create artificial concepts that allow them to analogize, but
3 they don't get to analogize here. The Court was clear, you
4 only get to analogize when there's unprecedented societal
5 concerns in the modern era.

6 But we know that's not at play here because *Bruen* told
7 us, and so did *Heller* and so did *McDonald*. *Heller*, *McDonald*,
8 and *Bruen* are explicitly about how the State deals with handgun
9 violence. And in all three cases, the Court said you cannot
10 regulate possession of handguns to address that.

11 In *Heller*, it was possession in the home because
12 that's what Dick Heller, the plaintiff, wanted; *McDonald*, the
13 same thing, that's what Otis McDonald wanted; and here, that's
14 what the plaintiffs in *Bruen* wanted. So the Court has already
15 disposed of that. There is no unprecedented societal concern.
16 It's the same issue as in those three cases. That's thing
17 number one.

18 Thing number two, dramatic technological change.
19 Again, this is handguns. *Heller*, *McDonald*, and *Bruen* all dealt
20 with modern handguns. There were no dramatic technological
21 changes at work in those cases. This is the same. So they
22 don't get to rely on dramatic technological changes to
23 analogize.

24 The third context is modern regulations unimaginable
25 at the time of the founding. These are just prohibitions on

1 handgun possessions. There's nothing unusual about these.
2 Again, it's no different than *Heller* and *McDonald* and *Bruen*.
3 It's preventing law-abiding people from possessing handguns for
4 self-defense. That's what the regulations are. So again, they
5 don't get to rely on that prong.

6 And at page 2133 of *Bruen*, when they talk about what
7 analogies are for, what that process is for in the context of
8 sensitive places, the Court says, new places. New places. And
9 they emphasize in italics the word "new," because all of the
10 places on the sensitive-place list existed in 1791. They had
11 parks, they had beaches, they had libraries, they had museums,
12 they had gambling houses, you know, they had restaurants. They
13 had all of these things. They had public gatherings. All of
14 that stuff existed.

15 And so -- they had vehicles. They were different.
16 But as we know from *Heller* and *McDonald* and *Bruen*, you don't --
17 and from *Caetano*, by the way. *Caetano* is actually very
18 instructive on this. You don't treat the right differently
19 just because a modern version of something is different. So,
20 you know, modern firearms are no different than 18th Century
21 firearms.

22 Same thing under the Fourth Amendment. You know,
23 modern methods of surveillance. Same thing under the First
24 Amendment, modern methods of --

25 (Court reporter interruption)

1 MR. SCHMUTTER: Modern methods of speech. The
2 internet, radio, television versus pamphleting.

3 The Court is clear, you treat them the same, and you
4 don't get special rules simply because modern technology looks
5 different than what things looked like in the 18th Century.
6 And so new places, something wholly different than what was
7 happening in 1791, there are none. And so they don't get to
8 analogize.

9 So they complain in their -- in their supplemental
10 briefs from Tuesday, the initial supplemental brief, because
11 Your Honor had asked us to initially brief the impact of the
12 *Koons* decision, they complain that Judge Bumb was improperly
13 forcing them or compelling them or expecting them to be exact
14 or to be a carbon copy -- they used the language from *Bruen*.
15 But that's -- now, I don't know if that's a proper description
16 of what Judge Bumb did. I think it's a little overstatement.
17 But the point is, she was correct to demand a very close fit
18 between the modern regulations that they're trying to support
19 and the historical examples because this is not an analogizing
20 opportunity.

21 And the State says something very revealing in their
22 brief which is, again, incorrect. And this is their -- in
23 either the supplemental brief or -- yeah, this is in their
24 supplemental brief on Tuesday. They say that *Bruen* invited
25 states to analogize, and that is not an accurate description of

1 what *Bruen* did.

2 I heard that -- I don't know if this is where they got
3 it, but I heard that in one of the hearings in the Senate, I
4 think it was the Senate Judiciary Committee, where one of the
5 Senators said, well -- and the discussion was, is there
6 historical tradition that supports this bill as it was making
7 its way through the legislature. And one of the Senators said,
8 well, we don't know, but *Bruen* sort of invites us to give it a
9 shot and we'll pass it and see what happens.

10 That is so exactly the opposite of what *Bruen* actually
11 says. There's no invitation to states, like to Jersey, to just
12 throw it out there and try it and see what happens. It's the
13 opposite. *Bruen* says, as I said previously, there is a broad
14 and general right to carry handguns and only in exceptional
15 circumstances can that be denied. So it's not an invitation to
16 just see what flies and see what sticks to the wall, it's it
17 should be a very careful analysis of what are those very narrow
18 exceptions, what are those very limited exceptions that are
19 very closely related to the ones that we know like polling
20 places, legislative assemblies, and courthouses, you know.

21 And so when the State tries to invent these kind of
22 arbitrary categories like government and
23 constitutionally-protected activities, that's not even stuff
24 that goes together. Again, they're trying to aggregate so they
25 can bump up the numbers to meet the numerosity requirement.

1 Where crowds gather is another one of their
2 categories. I mean, not only is that not a meaningful
3 aggregation of -- that's an aggregation of dissimilar items,
4 but it's specifically prohibited by *Bruen*.

5 *Bruen* goes out -- they have a whole discussion of like
6 how crowds don't count. New York tried to take that position
7 in *Bruen*, and the Court said, no, if you allowed crowds, then
8 it's everywhere. Everywhere is crowded. New York City is
9 crowded, New Jersey is crowded. New Jersey is one of the most
10 crowded states in the country. Crowds don't count.

11 And so for the State to say, oh, yeah, we're going to
12 have a category of crowds, I mean, it's directly contrary to
13 what *Bruen* says explicitly, you know. So it's important to
14 recognize that what they're doing in terms of building these
15 artificial categories is they're trying to get an end run.
16 They're trying to do an end run around what *Bruen* says is
17 required, and it really shouldn't be allowed.

18 And I guess the last -- I guess the last thing I want
19 to get to, Your Honor, is just I -- standing. We've briefed
20 standing, you know, exhaustively, but I want to remind the
21 Court about -- I don't want this to get lost, because this was
22 in our reply brief from last week and there have been two
23 briefs from each party since then.

24 In addition to all the standing arguments that have
25 been very thoroughly briefed, including yesterday, I want the

1 Court to remember that -- and this goes to redressability and
2 traceability, you know, that prong.

3 Remember, we argue in our reply brief that the
4 Attorney General, by Constitution and statute, the Criminal
5 Statute Act, is the chief law enforcement officer of the state.
6 That means that all law enforcement is subordinate to the
7 Attorney General, who is the lead defendant in this case. That
8 means that the Union County Police, the Union County
9 Prosecutor, the Bayonne Police, the Bayonne Municipal
10 Prosecutor, they are all bound and subordinate to the Attorney
11 General, so redressability is actually not a problem because,
12 as we said in our brief, this Court could fashion a remedy that
13 would instruct the Attorney General to ensure that any
14 authority that's subject to his jurisdiction does nothing
15 that's inconsistent with this Court's ruling.

16 So if the Court gives us relief on parks, for example
17 -- because this really is the park issue. If the Court gives
18 us relief on parks, not only will it enjoin, you know, the park
19 provision, but it could fashion a remedy that says the Attorney
20 General has to ensure that Union County and Bayonne and any
21 other jurisdiction that has similar restrictions do nothing
22 inconsistent with the Court's ruling. The Attorney General can
23 do that as the chief law enforcement officer.

24 Relatedly, the Attorney General has concurrent
25 jurisdiction vis-a-vis parks and vis-a-vis fish and game. And

1 so while the Parks Commissioner and the Fish and Game
2 Commissioner can visit civil penalties under those regulations,
3 the Attorney General has concurrent authority with respect to
4 criminal penalties.

5 So redressability is vast. The Attorney General is
6 directly implicated into those regulations as well. So it's
7 not like you have some arbitrary separate coequal official that
8 the Attorney General is unrelated to. The Attorney General is
9 deeply embedded in both of those regulatory structures, has
10 criminal authority, and therefore, in terms of redressability
11 and injunction against the Attorney General, would absolutely
12 satisfy what *Lujan* requires in terms of redressability.

13 Remember, the Third Circuit's clear, that you don't
14 need -- concurrent causation is fine. You don't need complete
15 relief, you just need relief. And if this Court gives
16 injunctive relief as to parks on that issue, these plaintiffs
17 are vastly better off precisely because of that.

18 And then I guess the final argument is simply the
19 declaratory judgment argument. Again, we don't want that to
20 get lost. We're also seeking declaratory relief. And, you
21 know, as the Court knows, municipalities and counties and other
22 departments of the State of New Jersey are all creations of the
23 State of New Jersey.

24 If the State of New Jersey is subject to a declaratory
25 judgment that parks and recreational facilities -- that

1 restrictions in parks and recreational facilities are
2 unconstitutional, as a matter of declaratory judgment, Bayonne
3 doesn't get a second bite at that. If the State of New Jersey
4 loses on that issue, the State of New Jersey loses on that
5 issue, the whole state loses. Bayonne doesn't get another shot
6 at that; Union County doesn't get another shot at that; and the
7 Parks Commissioner doesn't get another shot at that. So the
8 declaratory judgment makes a big difference in terms of
9 redressability.

10 And then the final point on the declaratory judgment
11 is under 1983, it would constitute clearly established law. So
12 whether or not under -- you know, under the qualified immunity
13 rules. And so if some public official in Bayonne or Union
14 County, or even the Parks Commissioner tries to visit some
15 criminal or civil penalty against these plaintiffs in the face
16 of a declaratory judgment that says it's unconstitutional to do
17 that under *Bruen*, you can be sure they would be subject to
18 damages under 1983 and they would not have the available
19 defense of qualified immunity.

20 Again, that's complete redressability because
21 declaratory judgment takes care of all of it. Everybody would
22 be frozen in place. If nothing else, because of under the
23 penalty of 1983 damages.

24 If Your Honor has any questions, I'm happy to address
25 them. Otherwise, I don't want to take up any more of the

1 Court's time.

2 THE COURT: Thank you. No questions at this time.

3 MR. SCHMUTTER: Thank you, Judge.

4 MS. CAI: Your Honor, I think I'll go in the order
5 that Mr. Schmutter did, which is first talk about what's before
6 this Court. I'll make a couple broad points on the merits. I
7 do want to get into the provisions, because it seems like we
8 were talking about in broad generalities before, and then I'll
9 end on sort of the standing, irreparable harm, and public
10 interest issues.

11 So what's before this Court? To be clear, you can
12 look at Mr. Schmutter's Exhibit B to his declaration where he
13 helpfully lists out what the TRO claims are and what the PI
14 claims are. There's 18 locations, by my count, maybe 17,
15 something like that --

16 THE COURT: 19.

17 MS. CAI: -- that are challenged in Siegel. Some of
18 them have multiple constitutional claims. I could tell you 13
19 of those are not in *Koons*, period, full stop.

20 So those are claims that are -- have only been before
21 this Court, have only been briefed before this Court. They are
22 only case -- they're only issues that this Court has reviewed.
23 And in addition, they are individual plaintiffs in this case
24 that are, obviously, not in *Koons*. They have -- they're
25 distinct declarations, claims in those declarations.

1 And we laid all of this out in our Tuesday letter, and
2 I don't really hear a response from plaintiffs except to just
3 try to say a hundred percent of the issues are resolved in
4 *Koons*. I mean, that's just not true.

5 Let me put it this way: If this case were sent to
6 Judge Bumb, or any new judge, they would have to hold a new
7 hearing, potentially receive some little briefing, but we're
8 here now before this Court. This Court has received all of our
9 materials, rounds and rounds of briefing, and obviously, is
10 hearing argument.

11 So I think it's --

12 THE COURT: But what happens with the *Koons* case?

13 MS. CAI: Well, Your Honor, if Your Honor wants to
14 hold off on deciding those claims because there's already a
15 TRO, it can do that. You can look at those claims and decide
16 if you want to deal with them later on. All we're saying is
17 that it's very inefficient to resolve only the claims that are
18 before this Court, which are numerous, and have only been
19 before this Court for the past few weeks that we're here to
20 discuss and to argue today.

21 And I think that's why this Court --

22 THE COURT: Well, let me ask the question a little
23 differently. And I understand your response and it did respond
24 to my question. I didn't mean to suggest that it didn't.

25 MS. CAI: That's quite all right, Your Honor.

1 THE COURT: In effect, Judge Bumb has granted a TRO --

2 MS. CAI: Yes.

3 THE COURT: -- on these sections. I want you to talk
4 to how those -- how that grant, those restraints on those
5 five -- let me get it right -- special places translate here.
6 Because they do, don't they?

7 MS. CAI: I think, Your Honor, there are -- it depends
8 on how you look at it. So what I would like to do is to go
9 over the provisions and tell you what evidence we have to
10 support each provision that's challenged here and why there may
11 not be any reason to look at the *Koons* decision for at least
12 many of those provisions that are challenged here.

13 THE COURT: So let me -- the reason I want to pause
14 and have you think about this is, as I read your supplemental
15 briefing, you are truly -- when I say "you," you understand I
16 mean the State, not you personally. We keep that in mind.
17 This is not about us. We're all doing our jobs and that's it,
18 including the Court.

19 You're asking me to -- and perhaps the legal
20 terminology is not the best I'm going to use, but reconsider
21 Judge Bumb's Opinion and apply it differently. That's what
22 you're asking me to do at the end of the day. That's how I
23 read it. Tell me why I'm wrong about that.

24 MS. CAI: Your Honor, you are free to do that, but I'm
25 telling you that you don't have to do that. And so there's a

1 distinction between the arguments we made -- and I think
2 Section 2(a) of our brief, which is regardless -- you can take
3 every word in the *Koons* TRO decision as-is and you could issue
4 a decision certainly as to the 13 other places and the other
5 constitutional challenges that don't conflict with the judgment
6 from -- the TRO judgment. And that is an option this Court
7 has.

8 Now, we do disagree with some of Judge Bumb's
9 reasoning, and we've highlighted that to the Court in Section
10 B. And this Court is also free to accept that or parts of that
11 and review that. And so that's all we're saying, Your Honor.
12 There are many issues that are only in this case and not in
13 *Koons*.

14 THE COURT: And so I'm pausing you again. This is
15 why -- and I'm not sure it was in the briefing, but this is
16 what I have been struggling with for the past day and a half,
17 two days, if I decide the motion to consolidate first. If I
18 decide the motion to consolidate first, and I find that the
19 equities militate in favor of Judge Bumb, do I even need to
20 reach the TRO here?

21 Which is why I pressed Mr. Schmutter on this -- you
22 know, because if I took it at face value, it's a hundred
23 percent done. Okay, well, I'm done then on the TRO. Right?
24 But we all know, counsel, the Court, that Judge Bumb's decision
25 didn't quite do that because these plaintiffs, number one, are

1 deferent people with different issues and different factual
2 underpinnings to their challenge to this law. Moreover, they
3 challenge more. They challenge more, more places, more
4 principles. Right? We have the other principles that are out
5 here that are challenged, the First Amendment, the code, the --
6 there are differences.

7 If you can think about that and give me how you
8 process if I decide the consolidation first and I put Siegel
9 into *Koons*.

10 MS. CAI: Your Honor, I think the two questions are
11 somewhat related in the way that you've asked it --

12 THE COURT: Uh-huh.

13 MS. CAI: -- which is, because the claims that are
14 distinct in this case are before Your Honor and have been fully
15 and are being fully fleshed out before Your Honor, it wouldn't
16 support consolidation of Siegel into *Koons*, in addition to the
17 rules-based arguments that we already made before, because
18 these are, as Your Honor just said, new claims, distinct
19 claims, unique claims, and they have only been heard by this
20 Court. And to repeat all of that, to send it away for a new
21 decision, I mean, that's not efficient.

22 THE COURT: But that's not totally accurate because
23 the only thing that is different at this juncture is the TRO
24 claims. Right?

25 So this is why we needed time with Bumb's decision.

1 If, in fact, she's enjoined the State from doing these
2 things -- which she has. That's how we read it. Probably
3 didn't say it, you know, totally correctly in the legal
4 verbiage. Is there irreparable harm left for me to address on
5 a TRO? Isn't the only thing left a preliminary injunction?
6 Isn't the only thing left a preliminary injunction?

7 And if a preliminary injunction is the only thing
8 left, don't the efficiencies and the principles that support
9 consolidation, putting aside first filed, doesn't that really
10 guide this Court to consolidate the case into Judge Bumb's case
11 and so it provides all of the efficiencies that consolidation
12 speaks to?

13 MS. CAI: So, Your Honor, I think there's two
14 different questions there. First is the 13 out of the 18
15 locations that are only in this case. So Docket No. 810,
16 Mr. Schmutter has listed all the claims that he's seeking a TRO
17 on. Now, there's probably another, you know, half a dozen or
18 more claims that are not before this Court on PI, but for the
19 ones that he's seeking a TRO on, these are not in *Koons*. So
20 protests and public assemblies, casinos, parks, youth sporting
21 events, airports, hospitals, filming locations, fish and game
22 restrictions, whether or not the same parcel of property is
23 shared with a school, these are not things that are in *Koons* at
24 all. And I can go through why --

25 THE COURT: But isn't the effect of *Koons*, doesn't

1 that deal with this?

2 MS. CAI: No, Your Honor. I think there are reasons
3 why these claims -- they are distinct claims, there's distinct
4 evidence to support these claims or support the provisions that
5 they're challenging, and those arguments are only before this
6 Court, and this Court would be considering those.

7 Now, as to the five that the *Koons* -- five provisions
8 that the *Koons* Court has ruled on on TRO, Your Honor brought up
9 a point about irreparable harm on that and this posture, and I
10 guess -- you know, I hadn't thought about it quite in that way
11 before, but I suppose you could say that because there is a TRO
12 currently on those claims, plaintiffs here don't have
13 irreparable harm on those five.

14 Now, I don't know if Mr. Schmutter agrees or not and
15 he can respond --

16 THE COURT: No. My argument is on any of it. Like, I
17 don't need to deal with the TRO at all because it's been dealt
18 with.

19 See, this is why -- again, you know, lawyers and
20 judges have to be very careful with the words they use,
21 especially when they put it in writing. You said nearly a
22 hundred percent, and then today Mr. Schmutter said 98 percent
23 of the work is done. What's the two percent? That's what I'm
24 trying to discern. Because you can't possibly be arguing to me
25 that the two percent are these other 13 claims.

1 MS. CAI: Your Honor, we have never argued --

2 THE COURT: No. I'm really talking to Mr. Schmutter.
3 I need to make --

4 MS. CAI: You were pointing at me and I was getting
5 nervous. Yes.

6 THE COURT: I need to make that clear. I was really
7 directing those comments to plaintiffs' counsel. And, look, I
8 practiced a long time. I know how to chase rabbits and know
9 how to get them out of the way. This is not a rabbit. This is
10 a real thing. This is plaintiffs' conceding, as I view it.

11 MS. CAI: Your Honor, if you think that plaintiffs
12 have conceded that they do not require injunctive relief from
13 this Court, then this Court can just deny the TRO and all the
14 issues can be decided on preliminary injunction when the TRO
15 expires. I mean, that's --

16 THE COURT: But not fully, not completely because I
17 have to take into consideration the effect, right? Because the
18 reason why I would even be able to is because of the analysis
19 that Judge Bumb has already undertaken.

20 This Court's in no position, inclination, or of the
21 mind that I've got to revisit the *Koons* decision,
22 notwithstanding your significant briefing that suggests perhaps
23 I should. That's not where I'm at. And so I'm raising this
24 and speaking to you and counsel about this because I want you
25 to focus on what I believe the challenges to a decision for me

1 are.

2 MS. CAI: Right. So I think that means, if I'm
3 hearing Your Honor correctly, that you want to talk about only
4 the claims that are in this case and not in *Koons*, and so we
5 can do that.

6 THE COURT: Yes.

7 MS. CAI: So if we want to start from, you know, the
8 first numerical one, which is Section 7(a)(6) on public
9 demonstrations.

10 THE COURT: And further limit the ones that -- I'm
11 sorry. Perhaps I've done this a little backwards. I probably
12 should have Mr. Schmutter tell me what's the two percent of the
13 case he thinks is left, and then have you respond to that.

14 MS. CAI: I'm happy to have him talk about that.

15 THE COURT: Because that way you're more circumspect
16 in how you address it and it actually speaks to what I'm
17 thinking about how this case should be resolved. The matters
18 before me today right now, not entirely.

19 MS. CAI: Sure.

20 MR. SCHMUTTER: Judge, I want to make sure I
21 understand what Your Honor's asking and saying about the
22 98 percent issue because I'm not sure I followed it.

23 Our contention -- when we say "almost all the work has
24 been done," what we mean is that as to those 13 -- I'll take
25 counsel's word for it. I didn't count them. But that sounds

1 about --

2 THE COURT: From my count is there's 19 all together,
3 she decided five, so there's 14.

4 MR. SCHMUTTER: Fair enough. I get it. Whatever it
5 is. Your Honor has a chart, and I have a chart so --

6 THE COURT: We all have charts.

7 MR. SCHMUTTER: Yeah, charts are helpful.

8 The two percent includes actually entering an order
9 because we -- even though Judge Bumb did all of the analysis or
10 almost all of the analysis necessary to get relief on those
11 other 14, we don't have relief on those other 14. Right? So
12 the next step is enter an order.

13 That's why -- that's our application for a TRO. So we
14 need those five and the other 14. But our point is, all the
15 same analysis applies. There's no additional *Bruen* kind of
16 analysis that has to be done because everything Judge Bumb said
17 in enjoining the first five applies equally to the other 14.
18 That's our -- that's what we mean by 98 percent done.

19 And then the other two percent, in addition to
20 actually signing a TRO for the other 14, includes those other
21 kind of issues that are outstanding like the Parks
22 Commissioner's -- they're standing issues on the Parks
23 Commissioner and Bayonne and Union County. That should be
24 resolved on that issue because that's not on *Koons*, so Judge
25 Bumb didn't deal with that. But that's why we say almost all

1 of the work has been done because the *Bruen* part, the
2 fundamental *Bruen* part, that all applies to this case. That
3 all applies to the 14.

4 And so if the Court is inclined to think that Judge
5 Bumb's analysis need not be redone, that gets you, Your Honor,
6 at 98 percent of the way to giving us relief on the other 14
7 because it's all the same, it all applies the same way. That's
8 why we pointed out that the State's historical examples are all
9 the same in both cases. It doesn't do them any better on the
10 other 14 than it did on the first five.

11 So the step would be to simply take the analysis from
12 Judge Bumb, apply it to the 14 in the same way, and we get a
13 19-item TRO instead of a five-item TRO that the *Koons*
14 plaintiffs have.

15 THE COURT: Thank you. Now I want to hear -- now that
16 that's clear on the record, let me hear from Ms. Cai.

17 MS. CAI: Your Honor, I think Mr. Schmutter's not -- I
18 think when he says 98 percent or two percent, he means he
19 agrees with everything that Judge Bumb did in *Koons* and so
20 someone can go and apply that to this case. That's all he's
21 saying. But that's not actually what's happening here. There
22 are 13, 14 new claims, and we have actually additional evidence
23 on those claims that Judge Bumb doesn't even have before her
24 because they were not before her.

25 There are -- plaintiffs have plaintiff affidavits

1 about their desire to visit those places that are not in *Koons*
2 because those were never challenged and the *Koons* plaintiffs
3 never talked about it. So by definition, this is just a
4 fallacy to say all one needs to do is to take the *Koons* Opinion
5 and then enter an order against all of these other provisions
6 that were not challenged there. I think that doesn't make any
7 sense, it would -- as I said, if this -- if those new claims
8 were to be heard by a different judge, we would need to submit
9 all of that before that judge again. And so it's not -- and to
10 go through all the evidence and all that.

11 So I can give you some examples of where this -- you
12 know, this becomes very, very crystal clear. And actually the
13 very first example is the first provision that the *Koons*
14 plaintiff challenged but -- sorry, the Siegel plaintiffs
15 challenge and the *Koons* plaintiffs don't, which is Section
16 (a) (6) on public assemblies. I'll talk about standing and
17 irreparable harm separately because I think, you know, we just
18 want to focus on the issues here.

19 We've cited numerous examples of historical
20 restrictions on public assemblies specifically. So that's
21 Exhibit 5, 8, 10 and 22. Some of those are not even before the
22 *Koons* Court because, again, this provision was not challenged
23 there. And these are specific historical analogs that
24 specifically mention public gatherings and public assemblies.
25 They are, for lack of a better word, historical twins, which

1 are not required under *Bruen*, but certainly if you have them,
2 they can only support the finding that these location-based
3 restrictions for firearms are supported by long tradition of
4 constitutionality.

5 And I think what's very clear is that these are claims
6 and evidence that are only before this Court. And we can talk
7 about, you know, plaintiffs' arguments that went to these
8 particular exhibits that are also not before the *Koons* Court.
9 So, for example, they have an argument in their reply brief
10 about the Georgia law, Exhibit 22, not before the *Koons* Court,
11 about how it only mentions public gatherings and that must mean
12 other things like voting and mustering and not general public
13 gatherings.

14 We are responding by saying actually it says public
15 gatherings except for militia muster grounds, and then it talks
16 about elections separately. So public gatherings means what
17 the statute says on its face. We're making all these arguments
18 uniquely on this particular piece of evidence that's in this
19 particular claim before this Court.

20 And so I think this is a very good example of an
21 argument and a claim that is unique, and you look at the
22 evidence that we submitted before this Court and can make a
23 determination as to the constitutionality of this very
24 long-standing provision that has never been challenged, as far
25 as we know, and plaintiffs certainly haven't put forth any

1 evidence that the historical tradition was somehow thought to
2 be unconstitutional or constitutionally suspect.

3 Then we can look at the next provision they challenge,
4 which is Sections 9 and 10, which apply to parks, beaches,
5 playgrounds, other recreational facilities. I think -- I am
6 sorry, I think nine is zoos, although I just got to remind
7 myself which one is which. Yes. Okay. So these are also not
8 challenged in *Koons*. And again, we're only talking about the
9 merits problems, although these definitely also have standing
10 and irreparable harm problems as well.

11 And this one is also straightforward. Our analogs for
12 these are numerous, directly on point, and not in before the
13 *Koons* Court because this provision was not challenged. So, for
14 example, in Exhibits 23 and 24, we discuss how two of the most
15 prominent public parks in America, Central Park and Fairmount
16 Park, restricted firearms very soon, as soon as they became
17 open to the public or within years thereafter, and in
18 Exhibits 25 through 28 we show how many other large parks open
19 to the public followed suit with the identical restrictions on
20 firearms soon thereafter.

21 As far as we know -- and plaintiffs have offered
22 nothing to the contrary -- these rules restricting firearms
23 access at parks were not challenged at the time, were not
24 deemed to be unconstitutional. They have nothing to refute
25 this evidence. All of these arguments are only before this

1 Court.

2 And I think it's important to also think about the
3 plaintiffs offered evidence on this issues. So, for example,
4 we talk about the rationales behind historical traditions, and
5 parks and beaches are good examples. They're often used for
6 large activities like festivals, concerts and such.

7 Plaintiff Stamos -- again, his allegations are only in
8 this case -- talk about how -- they only talk about going to
9 these parks in Bayonne for fairs and festivals and special
10 events. That's a good example of why the evidence in this case
11 shows that what *Bruen* calls the how and why of the historical
12 restrictions apply equally to the how and why of the modern
13 restriction that we're comparing.

14 And so I think this makes a lot of sense in terms of
15 what -- when you're thinking about how to apply *Bruen* directly,
16 I don't think anything that was discussed in the *Koons* decision
17 bears on this provision, certainly in terms of what it was
18 holding and certainly in terms of its reasoning because we have
19 directly analogous evidence and it is directly on point,
20 especially as to how the plaintiffs themselves claimed they
21 want to use these particular locations.

22 I can skip over the libraries and museums, although I
23 will say I think there's just some confusion there about are
24 they public or not. It only applies to public libraries, that
25 provision.

1 And then we can also talk about a number of
2 provisions -- and I don't have to go through each and every one
3 of them, Your Honor, they are in our briefing, but I think we
4 can talk about the ones that are not challenged in *Koons* that
5 are distinct here. So that's (a)(11), youth sporting events;
6 (a)(18), casinos; (a)(20), airports and transportation hubs;
7 (a)(23), movie sets. Right? And I think what's unique about
8 these, and it's something that Mr. Schmutter was talking about,
9 is, are they things that existed at the founding such that we
10 can't even try to give analogs? I mean, they are, right?
11 Airports historically did not exist; casinos historically did
12 not exist; movie sets; even train stations, there were no
13 locomotives at the founding.

14 And so we're looking at comparable locations or
15 comparable restrictions at locations and what kind of rationale
16 went into these provisions. These are things that the *Koons*
17 Court never passed -- you know, passed any judgment on,
18 received any briefing on, and I think we have a lot of very
19 good evidence for these.

20 So, you know, we talk about, for example, in
21 Exhibit 9, a Texas law that specifically provided that
22 circuses, shows, and public exhibitions are places where
23 firearms would not be allowed. I think that applies to movie
24 sets and, you know, these are -- there are other provisions as
25 well that this Court can look at.

1 And I think plaintiffs' main argument is that *Bruen*
2 rejected the idea that a place is crowded -- places that are
3 crowded are, by definition, sensitive places. I mean, we agree
4 with that. No one is saying, as the *Bruen* plaintiffs tried to
5 argue to the Supreme Court, that all of New Jersey or Manhattan
6 or even Jersey City is a sensitive place just because the
7 population density is high. But I think it's important to not
8 overlook the fact that *Bruen* said you look to the historical
9 analogs, right? You have to look to that. And just because an
10 expansive, an overly expansive reading of the word "crowded"
11 doesn't work doesn't mean that we ignore the actual historical
12 analogs, the actual prohibited firearms at specific locations.

13 We're talking about places like the Borgata, Newark
14 Penn Station, Newark Airport. Right? And so these are the
15 kinds of things that we are looking at in terms of the
16 historical tradition that supports that.

17 And so then we can also -- does Your Honor want to
18 keep going or do you have any questions about some of these --
19 I don't want to keep talking unless --

20 THE COURT: No. It just -- honestly, I just -- this
21 is what I hear, revisit *Bumb*'s decision. That's what I hear.
22 And I certainly am not bereft of understanding. I get it.
23 There's additional historical information and data. I'm just
24 compelled that one judge should be deciding these things.
25 That's really the impetus of my understanding of what is

1 happening here in this case, this case and *Koons*, that these
2 issues should be presented to one judge. That's what I think.

3 And in so doing, I think it serves the interest of
4 everyone, of everyone. No question, Judge Bumb's decision in
5 *Koons* did not address these things. Plaintiff can't even truly
6 argue this, in all candor. What he's arguing or seeking is the
7 extension of her decision onto these issues. That's what
8 you're arguing for. We all understand that.

9 Similarly, Judge Bumb's Opinion in *Bruen* is thorough
10 and exhaustive. And so as I'm framing this and my approach to
11 this, I keep landing on, you know, this really should be one
12 judge deciding all this. That's where I keep landing. And so
13 I know both of you have landed there too.

14 I'm just, honestly, a little -- hindsight is 20/20.
15 Should have dealt with the motion to consolidate, right? And I
16 say this because, look, we're human. And, you know, an
17 emergent motion to consolidate, when does that ever happen?
18 Because even though I'm new to this position, I've been in this
19 courthouse for quite a long time, and so I've seen plenty a
20 motion to consolidate. Emergent? And so I'm just struggling
21 here with how do I address what's before me right now, in light
22 of what Judge Bumb has already addressed, and provide what I'm
23 going to characterize as a roadmap for the parties to
24 resolution? Right? Because as judges, we can only deal with
25 what's before us.

1 These issues are important, widespread, and the
2 Supreme Court has spoken. So on some level, sometimes, you
3 know, I will say, wow, we wish this was clearer. Not the case
4 here, though, is it?

5 So, I mean, I don't want to short-circuit or shortcut
6 your arguments, but I do want everyone, counsel to be aware
7 that I've thoroughly considered these and it doesn't land me to
8 what I think is the right outcome. Right? Because I think
9 ultimately the right outcome is one judge. One judge should be
10 dealing with all of this.

11 Now, which judge? Which judge? We all work really
12 hard, so that's not what you're looking for. You're not
13 looking for a judge shop because you don't know what I'm going
14 to do. The neutrality provisions of 42 and 40.1 specifically
15 are there and well briefed and included. I think this case
16 here, the way that it's teed up, is different.

17 So I don't want to interrupt your presentation and
18 argument, I don't want to interrupt your argument, but as I get
19 deeper and deeper into your argument, my concerns are not
20 quelled. They're just heightened.

21 MS. CAI: If I may, Your Honor, on the last set of
22 discussion points?

23 I think what I would like to do is just to offer what
24 we think is the right roadmap for the sequencing of things, if
25 that may help. Obviously, it's up for Your Honor to decide.

1 But I think the natural order of things that I think alleviates
2 Your Honor's concerns is grant the motion to consolidate. It
3 seems like the plaintiffs agree it should be granted. We would
4 submit that this Court should follow the rules as they're
5 written and as they have been followed in cases where there
6 have been more activity in the higher docket numbered case, the
7 second filed case, and yet it still goes to the first filed --
8 first docket number. And that's because you want to follow the
9 same rules and not make, you know, sort of subjective
10 determinations about who did more work and all of that.

11 Second, this Court can then just rule on the 14 claims
12 that are not in *Koons* on the TRO posture. Everything's then
13 consolidated. We will come back to the PI on all of the
14 claims, as Judge Bumb would have to revisit the five claims on
15 PI anyway if these weren't consolidated. And so it's no
16 different than how it would proceed -- I mean, I think the
17 important thing is that it's going to be a case that has a
18 trajectory beyond the TRO period. Right?

19 There's going to be PI for sure, there's going to be
20 potentially an appeal from the PI that would give the Court
21 more clarity. After that, there may be discovery, dispositive
22 briefing, all that stuff. All that, we agree, should happen
23 before the same judge, and there's no reason to depart from the
24 neutral consistent rules that it's the judge who has the lower
25 docket number.

1 But I don't think this Court necessarily needs to be
2 concerned about two Courts ruling on the same provisions that
3 are challenged, because as to the five, I think there's a very
4 natural -- although I wish I could crystallize quite the same
5 way the Court did to say why is there a need for a TRO on five
6 claims that are already enjoined by another TRO?

7 And so it's really just about, you know, where we are
8 at the PI stage, and the same Court can address all of the
9 claims together at that stage, in addition to all of the claims
10 that -- you know, that are not even at the TRO stage, that are
11 only in this case. And so that's sort of the State's proposal
12 for the path forward generally.

13 And with respect to -- it's okay to not go through all
14 my prepared materials and the provisions. You have my
15 briefing, they're very voluminous, and I can certainly answer
16 any questions if Your Honor has any on those provisions. And
17 we can even do that on follow-up briefing. I'm sure Your Honor
18 doesn't want that. But if Your Honor were to have questions on
19 that, we're happy to do that.

20 And so that's sort of my submission on how to resolve
21 the where-we-are-now question and how-to-go-forward question,
22 and I don't think that's at all inconsistent with -- you know,
23 this case is unique, but I don't think it's inconsistent with
24 situations that this Court -- and by that, I mean the District
25 of New Jersey has faced before in cases like the *Younes* case

1 and the *Ricci* case where, you know, there are -- cases end up
2 in different places procedurally, even though they're supposed
3 to have been consolidated earlier, perhaps, and that's okay.
4 Obviously, we don't want to cry over spilled milk and all that.
5 That's all okay. That has happened before.

6 That has not prevented, you know, other judges and,
7 you know, the rules of this Court from operating the way -- in
8 a consistent way. Which is, regardless of what has happened in
9 a higher docket numbered case, so long as the need for
10 consolidation has been met, which I think everyone agrees they
11 have, the case, the second filed case falls under the first
12 filed case, and future proceedings, where the benefits of
13 consolidation are very palpable, continue on.

14 So that's sort of our submission for how this should
15 happen. I'm happy to answer any more of the Court's questions.
16 And I will say, we were gratified to hear from the Supreme
17 Court yesterday on the ultimate disposition of, you know,
18 how -- how injunctions should happen while the courts are
19 dealing with the issue. But, you know, Your Honor already has
20 our arguments on that and I won't belabor that anymore. Thank
21 you.

22 THE COURT: And to your point, I know you have more
23 prepared materials, but -- and I like to say when it happens,
24 the briefing in this case was superb on both sides. That makes
25 my job harder, though.

1 MR. SCHMUTTER: We're trying to make it easier, Judge.
2 Sorry.

3 THE COURT: That's not what happened, though.

4 MR. SCHMUTTER: May I very quickly be heard?

5 THE COURT: Yes, you may.

6 MR. SCHMUTTER: Thank you, Judge.

7 THE COURT: But that's the only reason that I'm not
8 hearing from you further. You've really briefed it extremely
9 well. And so -- and supplemented it well. Right? The final
10 briefing in this was, you know, 8:00 last night and not 7:59 or
11 8:01.

12 Mr. Schmutter?

13 MR. SCHMUTTER: Judge, thank you. It's interesting
14 that counsel mentioned *Antonyuk* because we all read the same
15 comments from Justice Alito. He is not happy at all so -- but
16 recognizes procedure and how things ought to be orderly. But,
17 yeah, he's not happy.

18 A couple things I just want to stress. I'm not going
19 to take up too much time. The -- this is important because,
20 obviously, there are a couple of historical examples like
21 Central Park, Fairmount Park that are not in *Koons*, but the
22 point that we're trying to make is -- and I'm not going to go
23 through all of those. We've briefed all of their examples,
24 it's in the papers, so I'm not going to waste the Court's time.

25 But importantly, the *Koons*' reasoning as to why the

1 State's examples don't help them, all applies to all of that.
2 And that's really our point. The reasoning carries over to all
3 of the examples that they give and all of the other places.

4 I want to make sure something doesn't get lost because
5 we're talking about 13, 14, or 18 versus 19. There is a
6 request in the TRO that the State has never commented on, never
7 opposed, never argued, and that's the over-breadth issue, the
8 multi-use property issue. They never commented on that.

9 And in addition to particular places that we believe
10 it is unconstitutional to prohibit handguns, there's the
11 problem -- it's the church problem. It's not just the church
12 problem, but it's acute with the church plaintiffs. And by the
13 way, there's never been any standing objection to the church
14 plaintiffs, Mr. Varga and Ms. Cuzzo.

15 They're subject to a very unique problem, which is
16 that -- and so is Mr. Siegel because he deals with the karate
17 school and the rest of the strip mall. Everybody really has
18 that problem, but Mr. Siegel and Ms. Cuzzo And Mr. Varga have
19 a very acute problem here. They are prohibited from carrying
20 in church because there is either actually a school, as in the
21 case of Mr. Varga, because they have a large campus where
22 there's a church building and a school over here that they
23 lease to the academy, the christian academy. That's an actual
24 school. It's easy to figure. We're not worried about that.
25 We know that's a school.

1 And so that school makes the entire campus a
2 prohibited area. That can't be consistent with *Bruen*. They
3 can't carry in church because there's a school on the other
4 side of the property. That's a huge problem.

5 Ms. Cuozzo has a related but slightly different
6 problem, and that is that the church building is split up into
7 Sunday School classes over here, the sanctuary where they pray
8 over here, and maybe they have Bible study classes on certain
9 days and they even have sports clinics. Actually, Mr. Varga's
10 church has the sports clinics. The point is, the way it's
11 drafted, any part of the property, parking lots, grounds,
12 anywhere, that means that if there's a class being taught,
13 arguably nobody in the church can defend the church.

14 That can't be constitutional. There's no way that's
15 constitutional. And I don't want to --

16 THE COURT: But is that it? Because it's vague and
17 overbroad, if those are your arguments, how do I enjoin? How
18 are you asking me to enjoin? Right? And so that -- again, as
19 we get into the layers of this --

20 MR. SCHMUTTER: It's more -- I am sorry, I apologize,
21 Judge.

22 THE COURT: That's all right. But if plaintiffs'
23 position is that, as drafted, the multi-use purpose is vague,
24 and one of the arguments is that the statute is overbroad for
25 multi-use, right, and/or the use of sporting events because

1 there's a school and acreage with different -- that's something
2 for a TRO?

3 MR. SCHMUTTER: Absolutely, Judge, because -- so we
4 don't -- it's not just a vagueness problem. So we have
5 multiple issues. We think that's a Second Amendment problem
6 because it's a prohibition on carry without historical
7 tradition. Right?

8 So if schools, like real schools, like West Orange
9 High School, Rutgers -- everybody knows that those count,
10 right? So if those share property with something for which
11 there's no historical tradition, there's no basis under *Bruen*
12 to allow this prohibition to carry over to this use. That's
13 the problem. So that's a straight-up Second Amendment problem
14 that's really on all fours with the other ones. It's just a
15 little bit unusual because of the way the statute is drafted in
16 an overbroad fashion.

17 But what they're doing is they're leveraging, they're
18 leveraging something that we haven't challenged on its face,
19 right -- because it's an as-applied challenge. The multi-use
20 property is an as-applied challenge really because we're not
21 challenging schools or daycares on their face. But it's
22 leveraging something we're not challenging on its face to
23 prohibit places that they could not prohibit on their face per
24 se if they had established -- you know, if they had a
25 prohibition on pizza places, right -- because there was a

1 karate school here and a pizza place three doors down. They'd
2 never be able to justify pizza places on their face, but
3 they're prohibiting carrying in the pizza place because --
4 assuming the karate school counts. If the karate school counts
5 as a school under the school portion of the statute, then
6 they've prohibited the drugstore, the pizza place, the Wendy's,
7 the shoe shop, and the tailor, none of which they can justify.
8 That's a problem that's part of our TRO application.

9 So I don't want that to get lost, Judge. I just want
10 to -- because the State has never mentioned that, they've never
11 addressed that. They have steered clear of that because I
12 don't think they have a good response to it, honestly, Judge.

13 There's something they're doing that really bears
14 correction. Their theory is that -- and this is the numerosity
15 problem. Their theory is that *Bruen* allows them to rely on a
16 single or two or three examples if it was not challenged as
17 unconstitutional and remained unchallenged in the law for
18 whatever period of time. That is not how *Bruen* works.

19 *Bruen* requires tradition, and tradition clearly
20 requires widespread practice. They do not get to say, well,
21 Texas had a law back in whatever year it was, nobody challenged
22 it, and therefore, that is now a tradition. That is not *Bruen*.
23 And I urge the Court to not let them get away with that. That
24 is completely not how *Bruen* works. That's a very important
25 point.

1 THE COURT: Well, I think we're all trying to figure
2 out how *Bruen* works.

3 MR. SCHMUTTER: Of course, Your Honor. And that's our
4 position, that that's not correct, and so we ask that that
5 position not prevail.

6 I think -- Your Honor, I think that's really all I
7 needed to -- I just wanted to clarify a few of those things.
8 Thank you.

9 THE COURT: Ms. Cai, do you want to be heard on this
10 issue about the multi-use and the no response to it? I don't
11 read it that you didn't respond to it, but if you wanted to put
12 that on the record, then --

13 MS. CAI: Other than we did respond to it at least on
14 standing grounds and that it's -- to note that this is an issue
15 that's purely in this case. I have nothing else to say. Thank
16 you.

17 THE COURT: Right. I think I'm going to take a brief
18 recess. There's a few references that counsel, each of you
19 made to other cases that escape me at this point. I want to
20 make sure that my reading of those cases was consistent with
21 what my plans are. That will be about 15 minutes. And to give
22 my phenomenal court reporter a well-needed break.

23 So 15 minutes, tops. It's now -- it's now 3:12. So
24 3:30, we will resume.

25 THE COURTROOM DEPUTY: All rise.

1 MR. SCHMUTTER: Thank you, Judge.

2 (Brief recess at 3:12 p.m.)

3 (In open court at 3:37 p.m.)

4 THE COURTROOM DEPUTY: All rise.

5 THE COURT: All right. Good afternoon. You can all
6 be seated.

7 So I have prepared and will enter a written opinion on
8 the docket later today or tomorrow, but given where this case
9 is, I'm also going to read it in the record so that you all
10 leave here knowing next steps.

11 As for the temporary restraining order, the Court is
12 aware and takes seriously its obligation to engage in the
13 independent review and evaluation of the issues presented in
14 matters pending before it. Here, the Court, however, cannot
15 ignore the procedural posture of both this matter and *Koons* and
16 how that bears on this Court's handling of important issues
17 outlined in the pending motions.

18 On January 9th, 2023, Judge Bumb ordered that
19 defendants, as well as their officers, agents, servants,
20 employees, and attorneys, and any other person in active
21 concert or participation with them are temporarily restrained
22 from enforcing the following provisions of Chapter 131 of the
23 2022 Laws of New Jersey, Section (7)(a), subparts 12, 15, 17,
24 and 24, and Subsection (7)(b)(1). Judge Bumb's Order was
25 accompanied by a thorough Opinion addressing five identical

1 sensitive-place provisions at issue here.

2 This Court has reviewed Judge Bumb's Opinion and
3 Order, the parties' submissions, including the supplemental
4 submissions which address the impact of Judge Bumb's Opinion
5 and Order on this matter and the relevant case law, and now
6 having heard argument on the same, I find no reason to reach a
7 different result on the five provisions of Chapter 131 already
8 enjoined by Judge Bumb.

9 Additionally, the Court reserves on a decision on the
10 additional sensitive places raised in this matter, because as
11 to the motion for consolidation, the Court agrees that
12 consolidation of Siegel into *Koons* is appropriate.

13 Pursuant to the Federal Rules of Civil Procedure 42,
14 "If actions before the Court involve a common question of law
15 or fact, the Court may join for hearing or trial any and all
16 matters at issue in the action; two, consolidate the actions;
17 or, three, issue any other orders to avoid unnecessary costs or
18 delay." Federal Rule of Civil Procedure 42(a)(1) through (3).

19 "The Third Circuit recognized that this rule confers
20 upon a District Court broad power, whether at the request of a
21 party or upon its own initiative, to consolidate causes for
22 trial, as may facilitate the administration of justice."
23 Citing *April Denise Williams vs. USA*. Citation will be
24 included in the written opinion and order.

25 "This power may also be exercised insofar as

1 consolidation would avoid unnecessary costs or delay.
2 Consolidation does not merge this suit into a single cause or
3 change the rights of the parties or make those who are parties
4 in one suit parties in another." *In re: Community Bank of*
5 *North Virginia*, 418 F.3d 277, 298, Note 12 (3d Cir. 2005).

6 "In considering a request to consolidate on one hand,
7 the Court is mindful that two actions do not have to be
8 identical, but could instead simply share common questions of
9 law or fact." *In re: Cendant Corp. Litigation*, 182 F.R.D.
10 476, 478 (D.N.J. 1998).

11 "After all, the purpose of consolidation is to
12 streamline and economize pretrial proceedings so as to avoid
13 duplication of effort and to prevent conflicting outcomes in
14 cases involving similar legal and factual issues." *CIMA Labs,*
15 *Inc. vs. Actavis Group*, 2007 Westlaw 1672229 (D.N.J. 2007).

16 As initial matter, the Court is aware that generally
17 cases consolidated are consolidated with the first-filed
18 matter. This Court, however, has discretion to find contrary
19 to the general rule and finds that the unique circumstances
20 presented here require consolidation of the Siegel matter into
21 the *Koons* matter.

22 The Siegel and *Koons* matters were virtually
23 simultaneously filed, with the *Koons* complaint having been
24 filed minutes before the Siegel complaint. The *Koons* matter
25 has developed more than this matter and significantly so.

1 Judge Bumb issued a 60-page Opinion and Order enjoining
2 enforcement of various provision of Chapter 131.

3 And today, although it's not clear, but it seems a
4 preliminary injunction briefing schedule is soon to be decided.
5 This dovetails into the other considerations regarding
6 consolidation, the risk of conflicting outcome and judicial
7 resources. The Court acknowledges the differences and the
8 similarities in the *Koons* and *Siegel* matters; however, as it
9 relates to the preliminary injunction proceedings, this Court
10 must protect against the prospect of conflicting outcomes
11 where, as here, both *Koons* and *Siegel* address the
12 constitutionality of the same legislation against at least two
13 identical defendants, Matthew Platkin and Patrick Callahan.

14 To be clear, the prospect of conflicting outcomes has
15 thus far been avoided. Consolidation ensures it will not occur
16 as these proceedings continue to develop in discovery and
17 ultimately to finality.

18 Moreover, the burden on judicial resources is great.
19 If these matters were to proceed before two different judges in
20 this same district, the court simply lacks the time and
21 resources for such waste. At this point, Judge Bumb has
22 already expended more effort than this Court has on this
23 matter, having considered and issued an Opinion and Order on
24 the TRO issued in her matter. The parties will be burdened
25 too.

1 As set forth above, the commonality of these two
2 matters will lead to overlapping discovery requests, witnesses,
3 and competing time frames from different judges. This Court is
4 steadfast in avoiding that.

5 For all of these reasons, the defendants' motion to
6 consolidate is granted in part and denied in part. The Court
7 will consolidate the Siegel matter into the *Koons* matter, but
8 the Siegel matter will consolidate -- I am sorry. I think I
9 repeated that. The Court will consolidate the Siegel and *Koons*
10 matter but -- so this is the denied part -- the Siegel matter
11 will be consolidated into the *Koons* matter.

12 To the extent claims are still outstanding with
13 respect to the temporary restraints, those are hereby reserved
14 for further proceedings following the reassignment of this
15 matter to Judge Bumb.

16 That is the ruling of the Court. Again, we do the
17 best we can with what we're faced with.

18 Yes, Mr. Schmutter?

19 MR. SCHMUTTER: I am sorry, Judge. I just have a
20 question. I just want to make sure I understood Your Honor's
21 ruling.

22 Your Honor is entering a TRO on the five and then
23 consolidating or not?

24 THE COURT: No, I'm not. This is all going -- I'm
25 reserving on any TRO decision. It's all going to Judge Bumb.

1 But I wanted to be very clear so that when Judge Bumb reads
2 this, she understands where I've landed, which is, I did not
3 find a reason to disagree or depart from how she decided those
4 five, but to the extent that those five have impact on the
5 remaining claims, it's for her to decide.

6 MR. SCHMUTTER: Thank you, Judge. Thank you.

7 THE COURT: Anything further on behalf of plaintiff?

8 MR. SCHMUTTER: No, Judge.

9 THE COURT: Anything further on behalf of the State?

10 (No response)

11 THE COURT: Thank you all. Have a good day.

12 MR. SCHMUTTER: Thank you, Judge.

13 THE COURTROOM DEPUTY: All rise.

14 (Matter adjourned at 3:48 p.m.)

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18 I certify that the foregoing is a correct transcript
19 from the record of proceedings in the above-entitled matter.

20

21 /S/ Sharon Ricci, RMR, CRR
22 Official Court Reporter

23

24 January 12, 2023
25 Date